

KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

Kyla Jackson
To Call Writer Directly:
+1 212 909 3347
kyla.jackson@kirkland.com

601 Lexington Avenue
New York, NY 10022
United States

+1 212 446 4800

www.kirkland.com

Facsimile:
+1 212 446 4900

May 29, 2019

VIA ECF

Honorable Colleen McMahon
U.S. District Judge, Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, NY 10007

Re: *Sergeants Benevolent Association Health & Welfare Fund, et al. v. Actavis, PLC, et al.*, Case No. 15-cv-06549

Dear Judge McMahon:

I represent Defendants Amneal Pharmaceuticals LLC, Upsher-Smith Laboratories, Inc., and Sun Pharmaceuticals Industries, Ltd. in the above-captioned action. I write in response to the Court's letter of May 17, 2019, and May 21, 2019 Order, in which the Court asked the Generic Defendants to respond to the following questions: (1) whether any defendant has taken inconsistent positions with respect to the same documents, i.e., documents relating to Generic Defendants' business and legal justifications for entering in agreements with Forest to settle the Hatch-Waxman patent litigation, in the DPP and IPP cases; (2) what actually did happen during the discovery of generics in the DPP case; (3) what challenges were mounted, if any, to the non-production of documents by the generics in the DPP case; and (4) whether privilege issues concerning these documents have been litigated before Judge Lehrburger in the IPP case. I respond now on behalf of all the aforementioned defendants.

With regards to the first question, none of our clients have taken inconsistent positions with respect to privileged materials in the DPP and IPP litigations. Any request that was made in either case that called for the production of privileged information was objected to accordingly.

During the DPP case, subpoenas were issued by both Plaintiffs and Forest to Amneal and Sun. In response to such subpoenas, both Amneal and Sun produced documents and gave oral testimony during Fed. R. Civ. P. 30(b)(6) depositions. No subpoena was issued to Upsher in the DPP litigation.

KIRKLAND & ELLIS LLP

Honorable Colleen McMahon
May 29, 2019
Page 2

Amneal and Sun asserted privilege over certain documents in the DPP case, however, no challenge to the assertion of privilege ever required the intervention of the Court.

With respect to the last question posed by the Court, none of these privilege issues have been litigated in the IPP case before Judge Lehrburger.

The parties in the DPP action have already elected which Generic Defendants they would seek discovery from. In response to those discovery requests, our clients participated fully in the discovery process. Discovery has now closed and we do not believe that fundamental fairness requires that discovery of the Generic Defendants be reopened in the DPP action.

By: /s/ Kyla Jackson
KIRKLAND & ELLIS LLP
Jay P. Lefkowitz, P.C.
Devora W. Allon, P.C.
Kyla Jackson
601 Lexington Avenue
New York, New York 10022
(212) 446-4800